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26  
27 IN THE UNITED STATES DISTRICT COURT  
28 THE NORTHERN DISTRICT OF CALIFORNIA  
1 SAN JOSE DIVISION

2 UNITED STATES OF AMERICA,

3 Case No. CR-18-00258 EJD

4 Plaintiff,

5 **DECLARATION OF JEFFREY B.**  
6 **COOPERSMITH IN SUPPORT OF**  
7 **MOTION FOR CEASE AND DESIST**  
8 **ORDER**

9 v.

10 ELIZABETH A. HOLMES and RAMESH  
11 "SUNNY" BALWANI,

12 Hon. Edward J. Davila

13 Defendants.

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19 DECLARATION OF JEFFREY B. COOPERSMITH

20 Case No. CR-18-00258 EJD

21 4831-4611-9793v.2 0103509-000002

1 I, Jeffrey B. Coopersmith, declare as follows:

2 1. I am an attorney licensed to practice in the State of California and before this  
3 Court. I am a partner with the firm of Davis Wright Tremaine LLP, counsel for Defendant  
4 Ramesh Balwani in the above-captioned matter.

5 2. Attached as **Exhibit A** is a true and correct copy of the grand jury subpoena  
6 issued to Theranos, Inc. on September 6, 2017.

7 3. Attached as **Exhibit B** is a true and correct copy of the letter I sent to the United  
8 States Attorney's Office on August 31, 2018.

9 4. Attached as **Exhibit C** is a true and correct copy of an email sent from John  
10 Bostic to Michael Mugmon on September 1, 2018.

11 5. Attached at **Exhibit D** is a true and correct copy of an email sent from David  
12 Taylor to Theranos Stockholders on September 4, 2018.

13 6. I understand from counsel for Theranos that the production currently sought by  
14 the government pursuant to the September 6, 2017 grand jury subpoena involves hundreds of  
15 thousands of documents. I am further informed that, based on search terms, many of the  
16 documents are likely covered by the company's attorney-client privilege, but the company lacks  
17 the resources to protect its privileges. The defense is also concerned that under the  
18 circumstances here the voluminous material that the company would produce to the government  
19 likely contains documents covered by joint defense or common interest privileges belonging to  
20 the defendants. Reviewing hundreds of thousands of documents for this purpose would be  
21 enormously burdensome for defendants, and unnecessary when, as noted in our motion, the  
22 government's post-indictment use of the grand jury process is untethered to any second  
23 superseding indictment. I understand that the government has declined to form a "taint team" to  
24 screen privileged material from the government's trial team because of the burden associated  
25 with this.

26 7. I understand that Theranos's counsel offered to place responsive documents on a  
27 hard drive and keep that drive in the possession of its counsel in the event that the documents  
28 become properly discoverable in the future.

1           8.        I was not aware that the government planned to seek a superseding indictment  
2 prior to my August 31 letter objecting to the government's use of the grand jury.

4 I declare under penalty of perjury that the foregoing is true and correct.

s/ Jeffrey B. Coopersmith  
Jeffrey B. Coopersmith

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